

The political reform agenda of Ursula von der Leyen

Andrew Duff



Table of contents

Electing the President	3
Priorities	3
Setting the agenda	3
The Conference on the Future of Europe	4
Ever closer union revisited	4
Deepening economic and monetary union	5
The battle of the budget	6
Better governance at home and abroad	6
The challenge of EU government	7
Endnotes	7

ABOUT THE AUTHOR



Andrew Duff is President of the Spinelli Group and a Visiting Fellow at the European Policy Centre. He was a member of the European Parliament 1999-2014. He tweets @AndrewDuffEU.

ACKNOWLEDGEMENTS / DISCLAIMER

This paper is based on a recent memorandum sent to President-elect Ursula von der Leyen by Andrew Duff with the support of Shahin Vallée.

The support the European Policy Centre receives for its ongoing operations, or specifically for its publications, does not constitute endorsement of their contents, which reflect the views of the authors only. Supporters and partners cannot be held responsible for any use that may be made of the information contained therein.

ELECTING THE PRESIDENT

On 16 July 2019, Ursula von der Leyen was elected as the next President of the Commission by 383 Members of the European Parliament (MEPs) to 327. The European Parliament which elected her was itself boosted by an unprecedented increase in overall voter turnout at the elections in May from 42% to 51%. Over the last few years, in part due to the financial crisis, a real European polity has started to emerge. Europe's voters are paying attention. Whether they love or loathe the European Union, its citizens recognise its importance.

However, the newly elected European Parliament is more fractured than in the past, and will be less easy to manage. Moreover, the election of Ms von der Leyen has been perceived by some as a renunciation of the *Spitzenkandidat* process initiated in 2014 which many saw as an important step forward in making the EU more accountable.

It is important to secure the legitimacy of the new European Commission by quickly establishing its credentials on matters of institutional and democratic reform.

While this more volatile state of affairs will actually strengthen the parliamentary nature of EU democracy, it increases the burden that will weigh on the woman at the helm of its executive. It is important, therefore, to secure the legitimacy of the new European Commission by quickly establishing its credentials on matters of institutional and democratic reform.

PRIORITIES

The top priority of the President-elect must be to obtain in October a broader endorsement of her whole college and political programme than the one she secured in July. This will be based on her own political guidelines, "A Union that Strives for More".¹ It will also have to take into account the strategy of the European Council and the European Parliament's failed attempt to write a *Koalitionsvertrag*. But her programme should be bolder than all of the above and acknowledge that building the European Union is very much unfinished business. Reforming the EU's governance and democratic underpinnings must be a priority, requiring a response that is both immediate and strategic.

The Union has many claims to be a success, but it is still a contested, even experimental polity. The 2007 Treaty of Lisbon corrected several flaws in the EU's make-up, but its entry into force at exactly the same time as the 2008 financial crisis impaired its implementation and exposed the incomplete

nature of the European project. The more recent decision of the United Kingdom to leave the Union has shattered belief in the irreversible nature of integration. Unless remedial action is taken to rescue the European project, further disintegration is a real possibility. Many leaders, like French President Macron, talk of the need for a profound institutional renewal of the Union, but few are prepared to be precise and engage in a process that will lead to a new constitutional settlement.²

SETTING THE AGENDA

Heads of government, brought together in the European Council, have an important agenda-setting role, but they tend to be resistant to radical change. While the euro crisis has furnished the European Council with far more executive power than the Lisbon treaty envisaged, the leaders have consistently been reluctant to address the more political and institutional issues. Constitutional reforms have been kept off the EU's agenda, or have been taken up in crisis mode, too late.

The most recent emanation of the European Council is "A New Strategic Agenda 2019-2024", published in June as the culmination of three years deliberation – the 'Bratislava process' – under the chairmanship of Donald Tusk. Typically, the Strategic Agenda wills the ends but not the means – a common fault of EU summit declarations over the decades. The European Council intends the EU institutions to "work in accordance with the spirit and the letter of the Treaties":³ the possibility of institutional reform, let alone treaty change, is not mooted.

In the last five years, the Commission has been able to accomplish very little in terms of constitutional reform, apart from the initiation of the federal European Public Prosecutor's Office (EPPO) and the launch of PESCO (Permanent Structured Cooperation) under the terms of the Lisbon treaty.⁴ In other areas, such as the banking union, capital markets union and defence union, there has been intensive secondary legislation but very little that actually changes the balance of power between the EU and national authorities.

Treaty fatigue has been a useful excuse for inaction. But now the context has changed.

The outgoing Commission has had recourse to building scenarios, but this turned out to be hardly more than an academic exercise because it never provided a method for delivering any scenario.⁵ The Commission's report to the Sibiu summit in May 2019 (part of the Bratislava process) focussed on communications policy and had little new of substance.

Sadly, even useful instruments provided by the Lisbon treaty have not been exploited. None of the *passerelle* clauses of Lisbon has been utilised: these provisions allow the EU to shift away from rigid unanimity in the Council towards more democratic decision-making, involving co-decision with the European Parliament.⁶ Very few attempts have been made at legislating enhanced cooperation by a group of integrationist minded states. The 2015 Five Presidents' Report on EMU has been lost from sight, leaving the EU ill prepared to face the next crisis.⁷ And there has yet to be a deep strategic reflection on the import of Brexit.

The EU needs a new method for debating and delivering changes of a constitutional nature. It is not enough for the EU institutions merely to promote unity and stability. They should also be committed to exercising confident leadership of the emerging polity.

We are well aware that the defeat of the constitutional treaty in 2005 was a big setback for those who hope for a federal union. Treaty fatigue has been a useful excuse for inaction. But now the context has changed. President Macron's election in 2017 was a signal that ambition for Europe could be back. The increased turnout for the European Parliament elections is another encouraging sign.

Nevertheless, the EU needs a new method for debating and delivering changes of a constitutional nature. It is not enough for the EU institutions merely to promote unity and stability. They should also be committed to exercising confident leadership of the emerging polity. We would urge the new Commission, therefore, to be ambitious and assert itself as the systematic driver of reform. Otherwise, EU reform will again be elusive.

THE CONFERENCE ON THE FUTURE OF EUROPE

The proposal of Ursula von der Leyen to establish a two-year 'Conference on the Future of Europe', starting next summer, has important potential. But the mandate and objectives of such a conference must be made clear if it is not to turn out to be yet another pointless exercise such as the 'democratic conventions' held in certain member states last year. The central purpose of such a conference should be to prepare the ground for a new Convention that will eventually be summoned to revise the EU treaties.⁸

This round of constitutional change can learn lessons from the last exercise in treaty revision, twenty years ago, when both governments

and parliamentarians were ill prepared. More transparency and citizen participation in crafting treaty amendments and a higher alertness to how transfers of power to the federal level might be regarded by public opinion will ease the politics around eventual ratification. Social media and modern technology will facilitate engagement with the wider public and boost the participatory nature of the exercise. We would expect that, profiting from the work of the consultative conference, the next Convention will be able to make definitive proposals for a constitutional settlement of a federal union. The treaty revision should be ready for democratic endorsement at the next elections to the European Parliament in 2024.

Some changes cannot wait that long, however. The President-elect is therefore right to prioritise electoral reform. The legitimacy of the European Parliament, and of the EU more generally, can be greatly enhanced by the development of proper political parties at the European level. Pan-EU parties will be essential sinews of supranational democracy, acting as shock absorbers in the evolving federal system. We therefore welcome Ms von der Leyen's commitment to helping the legislature initiate the necessary changes in primary and secondary EU law as soon as possible so that electoral reform will be in place in good time before the next elections.

More transparency and citizen participation in crafting treaty amendments and a higher alertness to how transfers of power to the federal level might be regarded by public opinion will ease the politics around eventual ratification.

The granting of a second vote at the elections, in addition to the national or regional ballot, would allow a number of MEPs to be elected for a pan-EU constituency from transnational party lists. Such a reform will constitute a new civic right for EU citizens and fulfil the longstanding quest for a truly European, uniform electoral procedure.⁹ The concept of the *Spitzenkandidaten* makes every sense in the context of transnational lists, anticipating that the next Commission president could be nominated by the Parliament and elected by the European Council in an inversion of the current, unsatisfactory procedure.¹⁰

It is also necessary to introduce a formula for the automatic reapportionment of national seats among the member states before each new election to the Parliament.¹¹ By ensuring fairer play, this reform will improve the stability of the EU's representative

system, and meet the concerns expressed by the German Federal Constitutional Court about the current legitimacy of the European Parliament.¹²

The President-elect is right to prioritise electoral reform.

EVER CLOSER UNION REVISITED

The EU has lived for its first decades on the presumption that steady integration coupled with gradual enlargement would lead it towards its historic mission of creating “an ever closer union”.¹³ Each new treaty rendered the Union more state-like, while every new member state enriched its diversity and brought impetus to the integration process.

Today, however, no matter how the Brexit saga plays out, the EU is left weaker, smaller and poorer by the decision of the UK to depart. Alongside Brexit is the knowledge that the 2004 enlargement has not gone quite according to plan. The link between widening and deepening has been broken. Some new member states are tempted to abandon the EU’s core principles of respect for the rule of law and judicial independence. Moreover, each of the EU’s current neighbourhood partnerships taking the form of association agreements which impose obligations in return for privileges is in some difficulty.

President Macron, among others, makes the point that the EU is at present too weak to contemplate further enlargement. So the EU needs to be inventive about its future institutional architecture: the concept of concentric circles of integration across the wider Europe is ripe for development. This implies a fundamental rethink of the EU’s internal organisation as well as its neighbourhood policy. The overriding objective should be a coherent system of dynamic association agreements (‘privileged partnerships’) that foster cooperation, manage conflicts, and encourage convergence. The EU should use its normative power to good effect. The strengthening of rule of law mechanisms inside the Union, as Ms von der Leyen proposes, will play its part in recalibrating relations with neighbours.

DEEPENING ECONOMIC AND MONETARY UNION

Perhaps the area where the institutional flaws of the EU are most exposed is that of the single currency for the simple reason that no currency in the world functions properly without a sovereign government and budget to stand behind it. German Chancellor Helmut Kohl believed that the arrangements for economic and monetary union (EMU) established

in the Treaty of Maastricht were only the first step towards fiscal union. Since then it has been Germany which has led the opposition in the Council to the completion of the EMU project. As the first German President of the Commission since Walter Hallstein retired in 1967, Ms von der Leyen will be in a unique position to change this, thus fulfilling Kohl’s ambition.

The euro survived the financial crash of 2008 due to the diligence of the European Central Bank (ECB), but as its president Mario Draghi has pointed out, the Bank’s room for manoeuvre is limited. The various crisis management measures put in place, and the first steps taken towards banking union, have only reduced but not eliminated the risk of another crash of similar proportions. The EU is constrained by its treaty to coordinate national fiscal policies, but mere coordination cannot achieve what a common policy would. As a result, the decisions and instruments adopted at the EU level tend to be either pro-cyclical or inadequate. The eurozone has no fiscal capacity of its own. There is no common safe asset issued by the Union that would allow it to reap the benefits of an international reserve currency and to stabilise the monetary union against adverse economic shocks. Several initiatives pursued by the European Council, such as the 2012 fiscal compact treaty, have proven to be false trails.¹⁴

The EU needs to be inventive about its future institutional architecture: the concept of concentric circles of integration across the wider Europe is ripe for development.

The most obvious feature of a shift from intergovernmental to federal governance of EMU would be the true communitarisation of the European Stability Mechanism (ESM), allowing it to morph into a real EU treasury. The ESM reform currently proposed is a parody that achieves nothing. Ms von der Leyen would be well advised to stop this proposal in its track and instead initiate the transfer of the ESM to the Commission, surrendering its paid-in capital to the EU budget. This would precipitate a change of governance from intergovernmental unanimity (subject to national parliamentary veto) to the executive decision of the Commissioner for Economic and Financial Affairs (Treasury Secretary) under the strict control of the European Parliament. This radical change of tack would signal that the new Commission President takes the deepening of EMU with utmost seriousness and would restart the debate, practically stalled since 2012, on a stronger footing.

Such a change of direction would have far-reaching consequences for the whole governance of the

Union. It would install a proper common backstop for the Single Resolution Fund. It would allow real progress to be made on the proposal for an unemployment insurance mechanism, which remains to date the only serious proposal to grant the monetary union a countercyclical stabilisation instrument, as well as offering citizens a claim on the EU for providing essential social services.

We urge the new Commission to build a broad coalition in favour of these reforms and to take on German and 'Hanseatic' opposition to risk sharing among eurozone members. In order to build this coalition, Ms von der Leyen should not hesitate to propose treaty amendments that would normalise the conduct of economic policy, including reforms to protect public sector investment and to de-constitutionalise the Maastricht provisions concerning the excessive deficit procedure, effectively rewriting the fiscal compact of 2012.¹⁵ This debate has already started in Germany as many recognise that the combination of strict *Schuldenbremse* at both Länder and federal level is an inadequate framework for fiscal federalism.

THE BATTLE OF THE BUDGET

The Von der Leyen Commission will soon face some critical decisions, not least on the new multi-annual financial framework (MFF). The paucity of the current EU budget speaks for itself: it is a budget in name only, having virtually no resources of its own; it cannot borrow and has limited flexibility on spending. It is more a piggy bank under the control of strict parents than a serious budget for an emerging federal union.

We would urge Ms von der Leyen to press for an MFF that stretches for only five and not seven years. This will allow each new Commission and Parliament to address the revision of the medium-term financial plan, thus reinforcing the democratic character of the Union. In addition, the disbursement of EU funds should be made conditional on the full respect for EU law, including the independence of the judiciary and the stamping out of corruption.

The paucity of the current EU budget speaks for itself: it is a budget in name only, having virtually no resources of its own; it cannot borrow and has limited flexibility on spending.

It is unlikely that the MFF will be agreed until the very last moment, under the German presidency of the Council of ministers in late 2020. This is because the decision on the regulation has to be taken by unanimity – unless it can be agreed unanimously to

shift to qualified majority voting (QMV).¹⁶ One would expect the Conference on the Future of Europe to draw the obvious conclusion and seek to entrench the use of QMV.

Until the European Parliament gains the power to co-decide the revenue side of the EU budget there will remain a yawning democratic deficit at the heart of the governance of the Union.

Likewise, there must be a parallel change to the decision-making procedure on the EU's own resources.¹⁷ Until the European Parliament gains the power to co-decide the revenue side of the EU budget there will remain a yawning democratic deficit at the heart of the governance of the Union. No self-respecting national parliament would tolerate being deprived of tax-raising powers. The new Commission should insist that the two chambers of the Union's legislature have co-equal rights to vote on the choices of both taxation and expenditure. The reform should be a flagship for the next bout of EU treaty revision.

Moreover, the current proposals to give the eurozone a specific fiscal capacity are completely inadequate both in terms of scale and governance. The money foreseen is negligible; decisions as to its use would be based on a Commission recommendation in the form of a Council recommendation with the Parliament only informed; and the money would be spent by member states, at their discretion, on national projects laying claim to help convergence and competitiveness for the euro area. Only a treaty revision will make sense of this.¹⁸

BETTER GOVERNANCE AT HOME AND ABROAD

We strongly welcome the Von der Leyen proposal to introduce QMV for law making in the field of energy, climate, social policy and taxation. This can be done by deploying the *passerelle* clauses.

We recommend that her political programme puts a high priority on further development of the EU as an area of freedom, security and justice. She should also prepare for a debate in the upcoming Conference on the Future of Europe about a further conferral of competence on the Union with regard to immigration, both lawful and irregular. We support the proposal to expand the powers of EPPO and of OLAF, the European Anti-Fraud Office, into the field of counterterrorism. We hope for proposals to increase the powers of EU agencies and supervisory bodies, including the ECB, wherever appropriate in the interests of good governance.

An early test of ambition in the field of common foreign and security policy will be to oblige the Council to act by QMV, as the Lisbon treaty prescribes.¹⁹ Proposals have been made to upgrade the Political and Security Committee into a 'European Security Council'. Nonetheless, it is naïve to think that a European defence union will emerge until such time as an EU military headquarters is established. In the short term, a group of states should undertake military tasks on behalf of the Union as a whole – for instance, to replace NATO in Kosovo.²⁰

Increasing the power of the executive must go hand in hand with more parliamentary accountability.

Increasing the power of the executive must go hand in hand with more parliamentary accountability. Ms von der Leyen's proposals to strengthen systematic contact between the Commission and Parliament are excellent. We would also recommend the Spinelli Group's proposal to replace the rotating presidency of the Council with more permanent chairs subject to the overall authority of the European Council.²¹

THE CHALLENGE OF EU GOVERNMENT

The central question for the Conference and the next Convention is to know whether the EU can agree to install a tier of effective democratic government up above that of the member states. The position the Von der Leyen college takes is critical here, especially to illustrate how the emergence of more federal governance can protect the interests of smaller member states and respect the principles of subsidiarity and proportionality.

The central question for the Conference and the next Convention is to know whether the EU can agree to install a tier of effective democratic government up above that of the member states.

The Union must assert boldly its own economic, political and security interests. But the assumption by the EU of strategic autonomy requires a federal executive capable of managing tiers of differentiated integration across the wider Europe; of taking horizontal action to foster transnational cooperation among its member states; and of taking vertical action to ensure efficient coordination between all levels of government, from the European, national and regional to local.

The EU must work hard to persuade its citizens to approve a centralisation of authority. Fortunately, many people already know that the scale and complexity of current challenges transcend the capacity of the old nation states and national political parties. National jealousies about transferring powers up to the EU level look archaic when the EU must deepen its integration across many fields. A Union that enjoys more competence, adequate resources and effective institutions will deliver public goods convincingly.

In good collaboration with Charles Michel, the new President of the European Council, Ms von der Leyen will have formidable authority to sway the direction of the heads of government over the next five years. Together they must insist that votes are taken by the European Council when the search for consensus becomes intolerably long.²² As an *ex officio* member of the European Council enjoying the support of the Commission and European Parliament, Ursula von der Leyen will be in a good position to stop unsuitable decisions and recruit her colleagues, many of them new, to support her concrete reform agenda.

¹ von der Leyen, Ursula (2019), [Political Guidelines for the next European Commission 2019-2024. A Union that strives for more: My agenda for Europe](#), 16 July 2019.

² See especially Macron, Emmanuel, "Initiative for Europe", Sorbonne University, 26 September 2017.

³ European Council (2019), [A New Strategic Agenda 2019-2024](#), Brussels, p.7.

⁴ Article 86 of the Treaty on the Functioning of the European Union (TFEU) and Article 46 of the Treaty on European Union (TEU), respectively.

⁵ https://ec.europa.eu/commission/future-europe/white-paper-future-europe/white-paper-future-europe-five-scenarios_en

⁶ Notably, Article 48(7) TEU.

⁷ Juncker, Jean-Claude (2015), [Completing Europe's Economic and Monetary Union](#), Brussels: European Commission.

⁸ Article 48(3) TEU.

⁹ Article 223 TFEU.

¹⁰ Article 17(7) TEU.

¹¹ Article 14(2) TEU.

¹² German Federal Constitutional Court (2009), "[Judgment of the Second Senate of 30 June 2009](#)", Karlsruhe.

¹³ Article 1 TEU.

¹⁴ Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.

¹⁵ Article 126 TFEU and Protocol No. 12.

¹⁶ Article 312(2) TFEU.

¹⁷ Article 311 TFEU.

¹⁸ Article 136(1)(b) in combination with Article 121(6) TFEU.

¹⁹ Article 31(2) TEU.

²⁰ Article 44 TEU.

²¹ Spinelli Group (2018), "[Manifesto for the Future of Europe: A Shared Destiny](#)", Brussels.

²² Article 235 TFEU..

The **European Policy Centre** is an independent, not-for-profit think tank dedicated to fostering European integration through analysis and debate, supporting and challenging European decision-makers at all levels to make informed decisions based on sound evidence and analysis, and providing a platform for engaging partners, stakeholders and citizens in EU policymaking and in the debate about the future of Europe.

The **European Politics and Institutions Programme** is one of the five thematic programmes of the European Policy Centre. It covers the EU's institutional architecture, governance and policymaking to ensure that it can move forward and respond to the challenges of the 21st century in a democratic and effective manner. The programme also monitors and analyses political developments at the EU level and in the member states, discussing the critical questions of how to involve European citizens in the discussions about the Union's future and how to win their support for European integration. It has a special focus on enlargement policy towards the Western Balkans, questions of EU institutional reform, and illiberal trends in European democracies.

With the strategic
support of



King Baudouin
Foundation

Working together for a better society



With the support of
Europe for Citizens Programme
of the European Union